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TO: Members of the Justice and Public Safety Oversight Committee
FROM: Brenda Carter and Susan Sitze, Committee Co-Counsel
RE: Summary of North Carolina Law Concerning the Expunction of Criminal Records

In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. The terms 'expunction' and 'expungement' are often used interchangeably, and both appear in the statutes. There are several requirements that must be met for expunction and a person may generally be granted only one expungement in his or her lifetime. Provisions for the expunction of criminal records are set out in Article 5, Chapter 15A of the General Statutes. This memorandum contains a brief overview of the circumstances under which expunction is authorized in this State.

Expunction When Charges Dismissed/Not Guilty

- ***Charges Dismissed Or Person Found Not Guilty*** - G.S. 15A-146 provides for the expunction of records when charges are dismissed or there is a finding of not guilty. A person charged with any crime, whether a misdemeanor or a felony, who is not convicted of that offense, can apply to have the charge expunged. *Persons who have previously received an expungement under this or other specified provisions, or persons who have previously been convicted of a felony would not qualify under this provision.*
- ***Charges Dismissed Or Person Found Not Guilty As A Result Of Identity Fraud*** - G.S. 15A-147 provides for the expunction of records when a charge is dismissed or there is a finding of not guilty in a case where a person is charged with a crime as a result of someone else using the person's identifying information to commit an infraction or crime. When the charge against the person is dismissed, a finding of not guilty is made, or the conviction is set aside, the person can apply to have the charge expunged. *There is no limit to the number of times a person who is the victim of identity fraud can qualify for an expungement under this provision.*
- ***Charges Dismissed Or Person Found Not Guilty Of Certain Drug-Related Offenses Committed While Not Over The Age Of 21*** - G.S. 15A-145.2(b) provides for the expunction of records when a person is charged with possession of a controlled substance, and the charges are subsequently dismissed or there is a finding of not guilty. *An order of expunction must be entered if the court determines that the person was not over 21 at the time of the offense for which the person was charged.* A similar provision is contained in G.S. 15A-145.3(b) with regard to misdemeanor violations of the Toxic Vapors Act and possession of drug paraphernalia.
- ***Pardon of Innocence*** – G.S. 15A-149 provides for the expunction of records when a person has been granted a pardon of innocence by the Governor.

Expunction When the Offender Was Under a Specified Age at the Time of the Offense

- ***Juvenile Records*** - G.S. 7B-3200 provides for a person to petition for the expunction of records relating to the person's having been adjudicated delinquent or undisciplined while a minor. *This provision does not allow the expunction of records relating to an offense that would have been a Class A-E felony if committed by an adult.* The statute also provides for expunction of juvenile records when a juvenile petition was dismissed without adjudication.
- ***Convictions of Misdemeanor Committed While under the Age of 18*** - G.S. 15A-145 provides for the expunction of records for first offenders convicted of a misdemeanor committed while under the age of 18. *A person who is convicted of a misdemeanor committed prior to reaching the age of 18 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions within that time period.*
- ***Misdemeanor Possession of Alcohol Committed While under the Age of 21*** - G.S. 15A-145 also provides for the expunction of records for first offenders convicted of misdemeanor possession of alcohol who were under the age of 21 at the time the offense was committed. *A person who is convicted of misdemeanor possession of alcohol committed while under the age of 21 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions in that time period.*
- ***Misdemeanor Cyberbullying Committed While under the Age of 18*** – G.S. 14-458.1(c) provides for the conditional discharge and dismissal of a misdemeanor cyberbullying offense committed while under the age of 18 and provides that expunction may be obtained pursuant to G.S. 15A-146. *(See Charges Dismissed or Person Found Not Guilty above)*
- ***Certain Gang Offenses Committed While under the Age of 18*** – G.S. 15A-145.1 provides for the expunction of records for first offenders who are either: (i) convicted of, or (ii) discharged and dismissed, for certain gang offenses, when the offense was committed while the offender was under the age of 18. *A person who is convicted of, or discharged and dismissed for, one of these offenses committed while under the age of 18 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions in that time period.*
- ***Nonviolent Felonies Committed While under the Age of 18*** –G.S. 15A-145.4 provides for the expunction of records for first offenders who are convicted of a Class H or Class I felony committed while the offender was under the age of 18. The provision does not apply to any felony that includes assault as an essential element of the offense, or to any offense that requires the person to register as a sex offender or that is otherwise specifically excluded. *A person who is convicted of an eligible felony offense committed while under the age of 18 may have that conviction expunged after 4 years, provided the person has completed any active sentence, period of probation, and post-release supervision, and there have been no other convictions in that time period. A petitioner seeking expunction under this provision must possess a high school diploma, a high school graduation equivalency certificate, or a GED, and must have completed at least 100 hours of community service since the conviction.*
- ***Conditional Discharge and Expunction for First-time Drug Offenders Not Over Age 21*** – G.S. 15A-145.2(a) and G.S. 15A-145.3(a) authorize the expunction of records for offenses discharged and dismissed pursuant to G.S. 90-96(a) or (a1) or G.S. 90-113.14(a) or (a1). These conditional discharges and dismissals are for first offenders who were not over the age of 21 at the time the offense was

committed, and who have not previously been convicted of any offense under North Carolina's Controlled Substances Act, Toxic Vapors Act, or Drug Paraphernalia Act, or under corresponding federal law or the laws of another state. When such person pleads guilty to or is found guilty of possessing a controlled substance, possessing drug paraphernalia, or inhaling or possessing any substance having the property of releasing toxic vapors or fumes, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place the offender on probation under certain conditions. *Discharge and dismissal under this provision may occur only once with respect to any person.*

- ***Cancellation and Expunction for First-time Drug Offenders Not Over Age 21*** – G.S. 15A-145.2(c) and G.S. 15A-145.3(c) apply to first offenders who were not over the age of 21 at the time the offense was committed, and who have not previously been convicted of any offense under North Carolina's Controlled Substances Act, Toxic Vapors Act, or Drug Paraphernalia Act, or under corresponding federal law or the laws of another state. No sooner than 12 months after conviction, the person may apply to the court to have a conviction of possessing a controlled substance, possessing drug paraphernalia, or inhaling or possessing any substance having the property of releasing toxic vapors or fumes, cancelled and records of that conviction expunged. *Cancellation and expunction under this provision may occur only once with respect to any person.*

Expunction of Larceny Conviction after 15 Years Have Elapsed From Date of Conviction

- ***Misdemeanor Larceny*** – G.S. 15A-145(d1) provides for the expunction of a misdemeanor conviction of misdemeanor larceny pursuant to G.S. 14-72(a) if the person has no felony convictions, it has been at least 15 years since the conviction for misdemeanor larceny, and the person has had no felony or misdemeanor convictions during that 15 year period.